In the Supreme Court of the United States

OCTOBER TERM 1970

No. 1312

HENRY C. HUBBARD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

---

1. This action was brought against the United States under the Federal Tort Claims Act for personal injuries petitioner sustained while deer hunting when he was shot by another deer hunter, Congressman Conte, on a United States Military Reservation.[1]

Petitioner alleged that the government was negligent because it failed to inform the Congressman that

[1] Petitioner also sued Congressman Conte in the same action. A jury returned a verdict in favor of Conte and the appeal was dismissed by consent (Pet. App. 2A).

hunters would be standing in a horseshoe formation and failed to point out to the Congressman where petitioner would be standing. The evidence on these points was in conflict. Congressman Conte, an experienced hunter, testified that he had not been fully briefed on procedures. An Army officer testified, however, that he had in fact instructed Congressman Conte as to the procedures and formation which would be used and had even drawn an explanatory diagram for him. Congressman Conte had also been advised in writing that it was his responsibility to insure he had a safe field of fire.

2. The district court found, after weighing the conflicting evidence, that there was no negligence on the part of the Army and entered judgment in favor of the United States. The court of appeals concluded that this finding was not clearly erroneous and, therefore, affirmed. The factual question of the negligence of the United States has thus been fully resolved adversely to petitioner and does not warrant further review by this Court. *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635; *Graver Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1971.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 417747 330